

SUPP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

THE UNITED STATES OF AMERICA,

Case No.: 2:17CR00005-001

Plaintiff,

**SUPPLEMENTAL SENTENCING
MEMORANDUM**

vs.

SETH WITTNER,

Defendant.

SETH WITTNER'S SUPPLEMENTAL SENTENCING MEMORANDUM

Defendant SETH WITTNER, through undersigned counsel, submits this supplemental sentencing memorandum in advance of sentencing.

Mr. Wittner attaches a copy of Exhibit D-1 which is a letter from his brother-in-law Robert Perrone. Mr. Perrone is a criminal lawyer in Massachusetts who has been practicing over the past 35 years. He describes Mr. Wittner as an intellectual, a musician, and as someone who enjoys helping his patients on a daily basis.

Mr. Wittner also responds that he has never been arrested for this sort of behavior involving child pornography prior to this offense. The Government's sentencing memorandum claims Mr. Wittner's memorandum incorrectly claims that Mr. Wittner is incorrect that he has never participated in collecting and viewing these offending images. (P.7, ll. 7-9). Mr. Wittner clarifies that he has never been arrested

1 or investigated previous to the current offense for viewing, trading, or collecting these
 2 types of images, and the Government has provided no evidence to the contrary that Mr.
 3 Wittner has previously been arrested or investigated prior to January 2015. In fact,
 4 Mr. Wittner has no prior criminal history.

5
 6 The Government is incorrect that Mr. Wittner “began counseling on January 14,
 7 2017, four days after the criminal information in this case was submitted to the Court
 8 (and 18 months after he retained counsel in response to the execution of the search
 9 warrant at his home.).” (P.8., ll. 13-16) Had the Government bothered to read Mr.
 10 Wittner’s Sentencing Memorandum, the Government would have seen the letter from
 11 Daniel Berarducci, MA, CPC, that Mr. Wittner began treatment at Person-Holistic
 12 Innovations on August 6, 2016 and engaged in 31 therapy sessions. A copy of this
 13 letter is included again for this Honorable Court’s review.
 14

15 CONCLUSION

16
 17 Wherefore, for the foregoing reasons, Mr. Wittner respectfully requests that the
 18 Court depart downward from the Federal Sentencing Guidelines and sentence Mr.
 19 Wittner to probation, home detention, halfway house or a combination thereof.
 20

21 Respectfully submitted,

22 */s/ Michael D. Pariente*

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Exhibit D-1

Counsellor at Law
Robert A. Perrone

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Re: Letter for Seth Wittner

Your Honor,

My name is Robert Perrone and my brother-in-law is Seth Wittner. I have known Mr. Wittner for over 40 years. Initially our relationship was as you might expect between brother-in-laws just pleasant and trite conversation for the most part. In the past 10 years or so however I have developed a better understanding of the person and his personality. We shared many intellectual communications about many subjects including discussions of baseball, he is a Met's fan and I love the Yankees, legal cases, and political and current event matters which are important to those who embrace and share a social conscience. You see Your Honor Seth Wittner truly cares about the people behind the stories and policies which shape and influence our lives on a daily basis. Seth is a true intellectual. More importantly though Seth is a person who respects and embraces the day to day activities of being a professional working in the field of medicine and helping those whom he treats on a daily basis.

Over his professional career my brother-in-law went from a music man to the medicine man. Initially, a man who composed and played instruments to make people happy and spread joy to his role now as one who employs and uses science to heal and comfort his fellow citizens. He is a good man your honor who did a terrible thing. Obviously in your wisdom and experience you will do what is just and right passing on his sentencing.

Like Your Honor I too play a role in our great criminal justice system. I have practiced criminal law in Massachusetts for almost 35 years. During this time I have seen a tremendous amount of anguish, anxiety and exhilaration in my day to day experiences in our great state courts. Your Honor I primarily practice in the state court system with vast experience in defending all sorts of misdemeanor and felony cases, and I do have some working knowledge of the federal sentencing guidelines. I understand that the court must follow to a certain extent the sentencing policy and rules as promulgated by Congress.

My brother-in-law broke the law and as such is before the court as a criminal defendant scheduled for sentencing. Seth Wittner is not a bad man, but is a good man who made a

bad choice. The great jurist, Felix Frankfurter, once wrote, "it is a wise man who said that there is no further inequality than the equal treatment of **unequals**", I know and trust that Your Honor will keep this concept in mind and close to your heart when you decide how to sentence Seth Wittner. Although he committed a reprehensible act for which he must receive punishment, please also consider in your wisdom his lack of criminal record, his amenability to rehabilitation and heretofore observance to probationary restrictions, his contributions to society as a constructive individual, his age, and most of all the terrible impact extensive incarceration will have on his otherwise timid nature.

Respectfully yours,


Robert Perrone, Esquire

May 7, 2017



May 3rd, 2017

To Whom It May Concern:

This is a treatment summary letter for Seth Wittner. The client began individual therapy services with Daniel Berarducci, MA, CPC at Person-Holistic Innovations on August 6th, 2016. Overall, the client has engaged in 31 therapy sessions since the date of his first appointment to the noted date on this letter.

The client sought out mental health therapy services on his own volition in order to explore aspects within his life that lead to a significant legal based concern that the client self-disclosed to the writer. The client and writer have been able to engage in building awareness within the client's past and current experiences that lead the client to engaging in behavioral decisions that potentially sacrificed his personal and professional well-being throughout the course of his treatment. The client and writer have been able to explore the nature of the client's continued decision making that will affect his current status within his legal based concern and how to continue to focus on his personal development for continued societal engagements/interactions with others.

Overall, the client has demonstrated continuous engagement and a willingness to participate in his therapy based services. The client has continued to explore the nature of his behavioral and emotion-based concerns that led to his current legal matters, with the focus of care being on continuing to assist the client in his emotional growth of self. The client and writer continue to focus on the client's awareness of behavioral decisions in order to continue to engage in building awareness of his decisions and how his responses will lead to growth within society, with his continued improvement. If you have any additional questions, please have a HIPAA Release of Information form completed by the client and sent to my office contact information below, in order to discuss the nature of treatment for the client in a further manner.

Respectfully,

A handwritten signature in black ink, appearing to read 'Daniel Berarducci, MA, CPC'. The signature is written in a cursive, somewhat stylized font.

Daniel Berarducci, MA, CPC

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2017, I electronically filed the foregoing Sentencing Memorandum with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Tony Lopez, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, 501 Las Vegas Blvd. South, Suite 1100, Las Vegas, Nevada 89101.

/s/ Michael D. Pariente

MICHAEL D. PARIENTE, ESQ.